Supreme Court, U.S.
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No. 92-1845

In The

Supreme Court of the United States

October Term, 1992

CRYSTAL CAMMACK MEDINA,

Petitioner,

v.

ANTHEM LIFE INSURANCE COMPANY,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the United States district court and the United States court of appeals err in refusing to fashion federal common law permitting recovery of extra-contractual damages in a suit to recover benefits from an employee welfare benefit plan regulated by the Employee Retirement Income Security Act of 1974 ("ERISA")?

2. Did the United States district court and the United States court of appeals err in dismissing petitioner's complaint, seeking benefits from an employee welfare benefit plan regulated by ERISA, for failure to exhaust administrative remedies?

PARTIES TO PROCEEDING

Crystal Cammack Medina

Anthem Life Insurance Company[1]

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[1] Anthem Life Insurance Company's parent company is Anthem Companies Incorporated, a Delaware corporation d/b/a Anthem Companies, Inc. Anthem Life Insurance Company has no subsidiaries.

TABLE OF CONTENTS

PAGE NO.

QUESTIONS PRESENTED i

PARTIES TO PROCEEDING ii

TABLE OF CONTENTS iii

OPINIONS AND JUDGMENTS BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED 1

STATEMENT OF THE CASE 2

SUMMARY OF REASONS FOR DENYING THE WRIT 4

ARGUMENT AND AUTHORITIES SUPPORTING REASONS FOR DENYING THE WRIT 5

I. THE UNITED STATES COURT OF APPEALS CORRECTLY REFUSED TO CREATE FEDERAL COMMON LAW TO SUPPLEMENT ERISA'S STATUTORY REMEDIES 5

II. THE UNITED STATES COURT OF APPEALS CORRECTLY APPLIED THE SOUND AND WELL-SETTLED DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES WHICH IS APPLICABLE TO CLAIMS FOR BENEFITS UNDER AN ERISA EMPLOYEE WELFARE BENEFIT PLAN 8

CONCLUSION 10

TABLE OF AUTHORITIES

Page

CASES:

Denton v. First Nat'l Bank, 765 F. 2d 1295 (5th Cir. 1985) 9

Drinkwater v. Metropolitan Life Ins. Co., 846 F. 2d 821 (1st Cir. 1988), *cert. denied*, 488 U.S. 909 (1988) 7

Harsch v. Eisenberg, 956 F. 2d 651 (7th Cir. 1992) 7

Ingersoll-Rand Co. v. McClendon, 498 U.S. 133 (1990) 7

Massachusetts Mut. Life Ins. Co. v. Russell, 473 U.S. 134 (1985) 6

McRae v. Seafarers' Welfare Plan, 920 F. 2d 819 (11th Cir. 1991), *reh'g denied*, 931 F. 2d 901 (11th Cir. 1991) 7

Medina v. Anthem Life Ins. Co., 983 F. 2d 29 (5th Cir. 1993), *petition for cert. filed* 1, 7

Medina v. Anthem Life Ins. Co., No. 3-90-2097-H (N.D. Tex. Nov. 12, 1991) 1

Medina v. Anthem Life Ins. Co., No. 3-90-2097-H (N.D. Tex. Jan. 3, 1992) 1

Meza v. General Battery Corp., 908 F. 2d 1262 (5th Cir. 1990) 9

Pane v. RCA Corp., 868 F. 2d 631 n. 2 (3rd Cir. 1989) 7

Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41 (1987) 5, 6

Ringking v. Philadelphia Am. Life Ins. Co., 910 F. 2d 1210 (4th Cir. 1990) 7

Simmons v. Wilcox, 911 F. 2d 1077 (5th Cir. 1990) 9

TABLE OF AUTHORITIES – Continued

Page

Sokol v. Bernstein, 803 F. 2d 532 (9th Cir. 1986) 7

Warren v. Society Nat'l. Bank, 905 F. 2d 975 (6th Cir. 1990), *reh'g denied, cert. denied*, 111 S. Ct. 2256 (1991) 7

STATUTES AND RULES:

Employee Retirement Income Security Act of 1974 section 502(a), 29 U.S.C. § 1132(a) ..... *passim*

Employee Retirement Income Security Act of 1974 section 501, 29 U.S.C. § 1131 8

Texas Insurance Code Article 21.21 § 16(e) 3

28 U.S.C. § 1254(1) 1

CONSTITUTION:

United States Constitution, Article III, Section Two 1

OPINIONS AND JUDGMENTS BELOW

Medina v. Anthem Life Ins. Co., 983 F.2d 29 (5th Cir. 1993), *petition for cert. filed.*

Medina v. Anthem Life Ins. Co., No. 3-90-2097-H (N.D. Tex. Jan. 3, 1992) (order granting motion to dismiss).

Medina v. Anthem Life Ins. Co., No. 3-90-2097-H (N.D. Tex. Nov. 12, 1991) (order denying motion for leave to amend).

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered January 28, 1993. Petitioners claim jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. United States Constitution, Article III, Section Two. *See* Appendix to Petition for Writ of Certiorari.

2. Employee Retirement Income Security Act of 1974

   (a) Persons empowered to bring a civil action

   A civil action may be brought –

   (1) by a participant or beneficiary –

   (A) for the relief provided for in subsection (c) of this action, or

   (B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or

to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

Employee Retirement Income Security Act of 1974, § 502(a), 29 U.S.C. § 1132(a).

STATEMENT OF THE CASE

Petitioner, Crystal Cammack Medina, is a beneficiary of an employee welfare benefit plan regulated by ERISA and administered by Respondent, Anthem Life Insurance Company.

Petitioner underwent dental treatments which resulted in submission of requests for predetermination of benefits. The requests were reviewed by Respondent's claim review committee and denied on the basis that there was insufficient evidence that the procedures were medically necessary.

Petitioner's attorney contacted Respondent and demanded that the requests for predetermination of benefits be approved. Respondent requested additional information and referred the issue to an outside consultant for

review. The outside consultant concluded that the treatment requested was medically necessary. Respondent notified Petitioner that the treatment had been approved.

The next day, Petitioner filed suit in state court seeking recovery of benefits, extracontractual damages for pain and suffering, mental anguish and punitive damages. Petitioner also sought recovery under Texas Insurance Code Article 21.21 § 16(e). Petitioner did not allege entitlement to recovery under ERISA Section 502(a).

Respondent removed the case to the United States district court on the basis of ERISA preemption. Petitioner filed her Amended Complaint admitting her state law causes of action were preempted and asserting entitlement to recovery under ERISA section 502(a). Although not expressly set forth in her Amended Complaint, Petitioner's answers to interrogatories indicated she sought to recover expenses incurred in connection with the approved treatment (hereinafter referred to as "benefits"). Petitioner did not file a claim with Respondent's claim department in connection with the benefits sought.

Both Petitioner and Respondent moved for summary judgment. Petitioner then filed her Motion for Leave to File Amended Pleading wherein she sought to add claims for extracontractual and punitive damages and urged the court to recognize the claims under federal common law. Respondent opposed the motion contending that ERISA preempted the claims Petitioner sought to assert. Respondent further argued such an amendment would be futile

because there was no basis for fashioning federal common law to permit recovery of extracontractual and punitive damages in an ERISA case. Petitioner's Motion for Leave to File Amended Pleading was denied.

Respondent then filed its Motion to Dismiss for Failure to Exhaust Administrative Remedies citing Petitioner's failure to file a claim for the benefits sought. Respondents Motion to Dismiss for Failure to Exhaust Administrative Remedies was granted. At the time the court entered the order of dismissal, Petitioner had not abandoned her claim for benefits. Respondent first learned of Petitioner's claim that she was no longer seeking benefits when it received Petitioner's brief filed in the court of appeals.

The United States district court's Order denying Petitioner's Motion for Leave to File Amended Pleading and Order granting Respondent's Motion to Dismiss for Failure to Exhaust Administrative Remedies were affirmed by the United States Court of Appeals for the Fifth Circuit.

SUMMARY OF REASONS FOR DENYING THE WRIT

1. Petitioner's request for a writ of certiorari should be denied because the Fifth Circuit followed sound established precedent in refusing to create federal common law to supplement ERISA's comprehensive remedial provisions.

2. Petitioner's request for a writ of certiorari should be denied because the doctrine of exhaustion of administrative remedies is well established, the doctrine is applicable to persons seeking benefits under ERISA and there is no support in the record for Petitioner's claim that she was not seeking benefits at the time the order of dismissal was entered.

ARGUMENT AND AUTHORITIES SUPPORTING REASONS FOR DENYING THE WRIT

I.

THE UNITED STATES COURT OF APPEALS CORRECTLY REFUSED TO CREATE FEDERAL COMMON LAW TO SUPPLEMENT ERISA'S STATUTORY REMEDIES.

Precedent Supports Holding: The Fifth Circuit's refusal to supplement ERISA's statutory remedies with federal common law permitting recovery of extracontractual damages is consistent with the intent of Congress, Supreme Court precedent and unanimous circuit court precedent.

The comprehensive nature of ERISA's remedial provisions is well established. "The deliberate care with which ERISA's civil enforcement remedies were drafted and the balancing of policies embodied in its choice of remedies argues strongly for the conclusion that ERISA's civil enforcement remedies were intended to be exclusive." *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 54 (1987). Although the Court has never specifically addressed

whether an ERISA beneficiary may recover extracontractual damages pursuant to ERISA section 502(a)(1)(B), the court held that ERISA section 409(a), an analogous provision, does not permit recovery of extracontractual damages. *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134 (1985). In reaching this conclusion, the Court noted:

> [S]ignificantly, the statutory provision specifically authorizing a beneficiary to bring an action § 502(a)(1)(B) . . . says nothing about the recovery of extracontractual damages, or about the possible consequences of delay in the plan administrator's processing of a disputed claim, thus, there really is nothing at all in the statutory text to support the conclusion that such a delay gives rise to a private right of action for compensatory or punitive damages.

Russell, 473 U.S. at 144.

Petitioner argues that *Pilot Life* and *Russell* are distinguishable because the parties did not request that the Court fashion federal common law. The point of *Pilot Life* is that ERISA preempts other causes of action and that the remedies available under ERISA are exclusive. Petitioner's appeal for federal common law merely seeks to resurrect preempted state law under another name. As discussed below, ERISA contains provisions which accomplish the objectives of the various state "bad faith" laws so there is no need to create federal common law causes of action for "bad faith" to replace preempted state law.

Petitioner also argues that the Court's decision in *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133 (1990) confirms the judiciary's right to fashion federal common law to supplement ERISA. This contention was considered and rejected by the Fifth Circuit, Seventh Circuit and Eleventh Circuit. *Medina v. Anthem Life Ins. Co.*, 983 F. 2d 29, *petition for cert. filed* (5th Cir. 1993); *Harsch v. Eisenberg*, 956 F. 2d 651 (7th Cir. 1992); *McRae v. Seafarers' Welfare Plan*, 920 F. 2d 819 (11th Cir. 1991), *reh'g denied*, 931 F. 2d 901 (11th Cir. 1991).

Furthermore, the circuit courts are all but unanimous in holding that extracontractual damages are not recoverable from an employee welfare benefit plan regulated by ERISA.[2] *Drinkwater v. Metropolitan Life Ins. Co.*, 846 F. 2d 821, 825 (1st Cir. 1988), *cert. denied*, 488 U.S. 909 (1988); *Pane v. RCA Corp.*, 868 F. 2d 631, 635 n. 2 (3rd Cir. 1989); *Ringking v. Philadelphia Am. Life Ins. Co.*, 910 F. 2d 1210, 1219 (4th Cir. 1990); *Medina*, 983 F. 2d at 33; *Harsch*, 956 F. 2d at 670; *Sokol v. Bernstein*, 803 F. 2d 532, 534 (9th Cir. 1986); *McRae*, 920 F. 2d at 821.

In the interest of preserving this substantial body of consistent and sound precedent, the petition for writ of certiorari should be denied.

Policy Supports Holding: Petitioner claims enactment of ERISA's remedial provisions left a vacuum in the protection afforded beneficiaries of an employee welfare

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[2] The Sixth Circuit's holding that extracontractual damages are recoverable under ERISA is based on the theory that such damages are "other appropriate relief", not as a consequence of federal common law. *Warren v. Society Nat'l. Bank*, 905 F. 2d 975 (6th Cir. 1990), *reh'g denied, cert. denied*, 111 S. Ct. 2256 (1991).

benefit plan. Petitioner specifically contends that, absent the creation of federal common law, ERISA's preemption of various state "bad faith" laws leaves plan beneficiaries with no recourse in the event of abuse by a plan administrator. The fallacy of Petitioner's argument is that it assumes ERISA itself contains no mechanism for regulating abuse when, in fact, the statute specifically provides for civil and criminal penalties against administrators who do not fulfill their fiduciary duties. Employee Retirement Income Security Act of 1974 section 501, 29 U.S.C. § 1131; Employee Retirement Income Security Act of 1974 section 502(a), 29 U.S.C. § 1132(a).

Not only is the vacuum illusory, ERISA's remedies are more effective and efficient. ERISA's remedies carry the benefit of regulating administrators without promoting expensive and counterproductive litigation which increases uncertainty and cost while decreasing availability of the benefits ERISA was intended to promote.

II.

THE UNITED STATES COURT OF APPEALS CORRECTLY APPLIED THE SOUND AND WELL-SETTLED DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES WHICH IS APPLICABLE TO CLAIMS FOR BENEFITS UNDER AN ERISA EMPLOYEE WELFARE BENEFIT PLAN.

Exhaustion Doctrine Properly Applied: Petitioner contends that her case was dismissed for failure to exhaust administrative remedies in connection with benefits she did not seek in her lawsuit. This contention is inconsistent with her answers to interrogatories wherein she

clearly asserted a claim for benefits. The record reflects that at the time Petitioner's Complaint was dismissed for failure to exhaust administrative remedies, she was in fact seeking benefits. Petitioner's subsequent abandonment of the claim for benefits cannot retroactively affect the validity of the court's order.

In essence, Petitioner is attempting to maintain a lawsuit against Respondent for clarification of rights and injunctive relief (an injunction dictating the method for handling claims), while at the same time refusing to avail herself of established administrative procedures for obtaining benefits. The Fifth Circuit correctly found that Petitioner failed to exhaust her administrative remedies because she failed to file a claim for the disputed sums despite knowing the procedure for filing such claims. Because she failed to exhaust her administrative remedies, her case was properly dismissed. *Simmons v. Wilcox*, 911 F. 2d 1077, 1081 (5th Cir. 1990); *Meza v. General Battery Corp.*, 908 F. 2d 1262, 1279 (5th Cir. 1990); *Denton v. First Nat'l. Bank*, 765 F. 2d 1295, 1303 (5th Cir. 1985). Petitioner advances no special and important reason why the doctrine of exhaustion of administrative remedies should not be applied in an ERISA case, accordingly, her petition for writ of certiorari should be denied.

CONCLUSION

Respondent requests that the petition for writ of certiorari be denied.

Respectfully submitted,

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